

Document for Discussion of a Recommendation to the Scottsdale City Council by the Human Relations Commission Regarding Adopting a Non-Discrimination Ordinance and/or an Anti-Harassment, Non-Discrimination, Non-Retaliation Policy for the City of Scottsdale Elected and Appointed Officials.

RECOMMENDATION #1: The Scottsdale City Council should adopt an ordinance prohibiting discrimination in employment and public accommodations, and expanded prohibitions in fair housing to certain enumerated classes.

EMPLOYMENT

- The ordinance should prohibit employment discrimination on the basis of ethnicity, age, race, sex, gender, national origin, religious belief, sexual orientation, gender identity, or disability.
- Discrimination might include refusing to hire someone or discharging individuals; taking actions that adversely affect pay, benefits or other employment terms; segregating jobs or work sites; sexual harassment; engaging in or tolerating harassment; or retaliating against someone because they complained about discrimination.
- Discrimination may also include wage disparities or unequal pay treatment solely because an employee is a member of a protected class.
- Religious organizations and activities conducted by religious organizations would be exempt but not for any purpose that would evade this ordinance or state or federal law.

HOUSING

- The ordinance should add to the prohibitions of housing discrimination on the basis of race, color, creed, sex, religion, national origin, or ancestry, the following: ethnicity, gender, sexual orientation, gender identity, or disability.
- Housing discrimination may include refusing to show, rent or sell; refusing to negotiate; charging more to buy, rent or asking for a larger security deposit; advising that the property is no longer for sale or rent when it really is; advertising that they want a certain type of person to buy or rent; denying access or use of the facility or service that is normally available with occupancy; suggesting you move to an area where you don't want to live; allowing unlawful bias to affect the appraisal of a property.
- The ordinance should not apply to religious organizations and facilities that they own or operate.

PUBLIC ACCOMMODATION

- "Public accommodations" are businesses and organizations that are available to the general public as defined by law.
- The ordinance should prohibit discrimination in public accommodations on the basis of ethnicity, age, race, sex, gender, national origin, religious belief, sexual orientation, gender identity, or disability.
- Discrimination in public accommodations may include failure to allow entrance, providing barriers to entrance, or treating persons differently.
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- The ordinance should not apply to religious organizations and facilities they own or operate.
- Private clubs could not be established for the purpose of evading the ordinance.

ENFORCEMENT

- The city will actively enforce complaints of discrimination in relation to ethnicity, age, race, sex, gender, national origin, religious belief, sexual orientation, gender identity, or disability, and will also be referred to the applicable state or federal agency.
- Anyone accused of discrimination would have the opportunity to respond to the complaint.
- Valid complaints would go through mediation by an independent mediator.
- Charges would only be filed after an independent investigation reviewed by the City Attorney.

- Charges would be civil, not criminal, and would include warnings and incremental fines maxed at \$2,500.
- False or misleading complaints may be referred by the city attorney for possible prosecution.

PROTECTION OF RIGHTS AND FREEDOMS

- The ordinance should guarantee protection of First Amendment rights, including freedom of speech and religious expression, and is not intended to limit other rights, protections or privileges available under state or federal constitutions and law.

RECOMMENDATION #2: The ordinance should also establish an anti-harassment, non-discrimination and non-retaliation policy that would apply to elected and appointed officials of the City of Scottsdale.

ANTI-HARASSMENT, NON-DISCRIMINATION AND NON-RETALIATION POLICY

- The policy should prohibit any elected and appointed official of Scottsdale, when acting in the course and scope of their duties during their term in office, from using words, conduct or behavior to harass or discriminate against any person or group on the basis of ethnicity, age, race, sex, gender, national origin, religious belief, sexual orientation, gender identity, or disability.
- The policy should prohibit any elected and appointed official of Scottsdale, when acting in the course and scope of their duties during their term in office, from making negative or disparaging comments or behavior towards a person or group that is a protected class.
- The policy should also prohibit retaliation against any person or group that makes a complaint or participates in an investigation under this policy.
- The City of Scottsdale City Council will actively enforce complaints of discriminatory behavior by elected and appointed officials. Any official accused of violating the policy would have the opportunity to respond to the complaint. After investigation, valid complaints would be voted upon by the full City Council. A vote of majority of Council members would determine whether the official violated the policy. Like the City's Code of Ethical Behavior, the City Council could vote to remove the appointed official from their respective board or commission.
- Unlike other municipal laws or ordinances that include three forms of sanctions (censure, fines and/or removal from office), the Scottsdale policy would limit sanctions to a formal vote by the City Council regarding whether the elected or appointed official violated the policy.
- The City Council should consider referring to the voters a City Charter amendment allowing the City Council to censure a City Council member for violations of this policy.
- This policy would focus solely on discriminatory, prejudicial or racist language or behavior and does not impose overarching restrictions on the guaranteed protection of First Amendment rights, including freedom of speech and religious expression, and is not intended to limit other rights, protections or privileges available under state or federal constitutions and law.
- This would not apply to any legitimate discussion with regard to issues of discrimination and retaliation. Comments by an elected or appointed official calling out discriminatory, prejudicial or racist language or behavior would not constitute a violation of this policy.
- False or misleading complaints may be referred by the city attorney for review.